BIN HEE HENG

v.

MANAGEMENT CORP. STRATA TITLE NO. 647

HIGH COURT, SINGAPORE
YONG PUNG HOW CJ
[DISTRICT COURT APPEAL NO. 37 OF 1988]
14 MARCH 1991

COMPANY LAW: *Meetings - Extraordinary general meeting - Failure to give requisite 7 days notice - Whether quorum - Whether resolutions null and void - Meaning of 'persons entitled to vote', 'voice vote' and 'show of hands' - Whether proxies included - Second annual general meeting not called within 15 months of first annual general meeting - Interpretation Act [Sing], s. 2 - Land Titles (Strata) Act [Sing], 1st Sch. para. 11.*

LAND LAW: *Maintenance contribution - Arrears - Meaning of contribution - Interest - Validity of meeting and resolutions imposing maintenance contribution - Notice of meeting below mandatory period of seven days - Quorum - Persons forming quorum - Meaning of persons entitled to vote - Whether include proxies - Whether proper to disqualify on ground of non-payment - Meaning of non-payment of contribution - Resolution carried by 'voice vote' and not 'show of hands' - Meaning of 'show of hands' - Annual general meeting more than 15 months after last annual general meeting - Interpretation Act [Sing], s. 2 - Land Titles (Strata) Act [Sing], ss. 3, 28(8), 29(1), 34 & 1st Sch. paras. 11, 12(1), (2), 14, 15, 16.*

The respondents are a management corporation (MC) of a condominium which consists of 172 properties of a walk-up apartment block (Skyvilla) and two high-rise blocks (Skyscraper). The appellant BHH, was the subsidiary proprietion of a flat in Skyvilla and was sued by the MC for arrears in contribution to the maintenance fund together with interest thereon, both of which were levied in accordance with resolutions passed at an extraordinary general meeting of members of the MC held on 3 March 1984 (EOGM), and confirmed to the adjourned second annual general meeting (second AGM) held on 30 February 1985. The dispute arose from the EOGM called by the MC to pass, among others, a resolution to levy contribution to the maintenance fund on the basis of the share value for each subsidiary lot which would have had the effect of raising and bringing the contribution due from the subsidiary proprietors of Skyvilla units to the same level as that for Skyscraper owners although the Skyscraper units were larger in area, and the maintenance and repair costs for the Skyscraper blocks with lifts would be higher.

The notice in respect of the EOGM was served about three days before the meeting when the minimum period stipulated was seven days. BHH attended the EOGM and objected to the 'raise' in the then existing contribution. As a result of the objection, it was resolved that the matter on contribution was to be suspended for three months and the issue as to whether contribution should be determined solely by the share value of the subsidiary proprietor or by any other method, referred to the High Court. The High Court confirmed that the only method for levying contribution under the Land Titles (Strata) Act (the Act) was in accordance with the share value of the subsidiary proprietor. The minutes of the EOGM regarding the contribution to be levied was put up for consideration at the second AGM of the MC on 27 January 1985. This meeting was adjourned to the following week, 3 February 1985, when the minutes of the EOGM was confirmed by a poll, and it was resolved that maintenance contribution towards the management fund shall be RM74 per share unit per month, payable

quarterly in advance. As BHH refused to pay, the MC sued him for the contributions amounting to the total sum of RM5,093.94. BHH in return counterclaimed for the costs incurred in replacement of awnings to his flat and the clearing of blockage to some pipes. The District Court awarded judgment to the MC on the whole sum sued for while allowing BHH only a part of his counterclaim. BHH submitted 68 grounds of appeal which can be broadly summarized as follows:

(1) That the EOGM on 3 March 1984 was invalid because there was a failure to give the necessary seven days notice, there was no quorum, and that some subsidiary proprietors (including BBH) were improperly disqualified from voting;

(2) As the EOGM was invalid, all the resolutions were null and void and could not be ratified;

(3) The adjourned second AGM on 3 February 1985 was invalid as it was not called within 15 months of the first annual general meeting;

(4) All the defects could not be waived by BHH.

Held:

[1] Under para. ll sch. 1 to the Act, the omission to give the requisite notice of meeting *prima facie* invalidated the meeting; however the Court has to determine whether the omission was accidental, so that the proviso to para. ll could apply. There had been no deliberate failure on the part of the corporation to give notice, and consequently any omission would have been an accidental one, coming within the proviso to para. ll. An appellate Court should always be slow to interfere with such a finding of fact. So far as the appellant was concerned, he had not been prejudiced by the short notice as he had been able to circularize all other Skyvilla subsidiary proprietors to attend the meeting and oppose the resolutions, and he himself attended the meeting and took an active part in it.

[2] The term 'persons entitled to vote' included proxies. This category cannot be restricted to proprietors but must necessarily be extended to include their proxies; apart from the fact that the term 'proprietors entitled to vote' would have been used if it had been intended to restrict its scope to proprietors and to exclude proxies, para. 15(1) has specifically conferred on proxies a clear entitlement to vote both on a show of hands or on a poll.

[3] Indeed, since 'persons' must include 'companies' under s. 2 of the Interpretation Act, if the construction contended by the appellant were correct, a quorum might be difficult to achieve if corporations owned the majority of lots, or be impossible if all lots were owned by corporations; and, in any such event, subsidiary proprietors who were corporations or persons living out of the jurisdiction would be prevented from voting. Such a construction would not be consistent with the purpose of the Act (see para. 3(2)) or the smooth working of the system of management which it intended to regulate.

[4] The word 'contribution' includes contributions whether pursuant to a resolution of the MC or otherwise and thus included the sums payable to the developer as maintenance contribution, prior to the setting up of the MC. Thus as the said sums had not been paid by BHH at the date of the EOGM, he was properly disqualified from voting at the EOGM.

[5] The form and wording of the terms in which the resolutions were submitted in the notice of meeting and subsequently recorded in the minutes of the meeting clearly did not reflect the correct situation on the ground at the relevant times and were therefore not entirely satisfactory, as so often happens with proceedings of management corporations in which legal or drafting expertise is usually not available. But the purpose and implications of the

resolutions in the present case could not have been other than clear to all the subsidiary proprietors when they received the notice or attended the meeting. Therefore, the imperfections in drafting the terms of the resolutions in no way prevented the subsidiary proprietors from understanding the full import of their terms. The fact that the resolutions might not have been properly implemented later also in no way affected the validity of the resolutions themselves.

[6] Voting by 'show of hands' is not restricted to its literal meaning of raising of hands but in fact bears a wider meaning of a show or demonstration by the meeting that it is in support of a resolution, so as to contrast with the more exacting procedure of a vote by poll. In practice, when resolutions clearly have the support of the majority at a meeting, as was the case with the three resolutions at the extraordinary general meeting, the procedure of showing hands does not require the actual number of votes or hands for or against the resolution to be counted and recorded, and this was in fact the position under para. 14(2) of the first schedule. While the recording in the minutes of a formal declaration by the chairman that a resolution had been carried by a show of hands would be preferred, the failure to do so did not *per se* make a resolution invalid. In the circumstances, the recording in the minutes that the proposal was approved was sufficient evidence of a valid resolution. The intention and resulting implications of this poll were clear and constituted a ratification and confirmation, if such were needed, of those resolutions.

[7] If there was any doubt as to the validity of the resolution at the EOGM, the resolution at the second AGM approving the minutes of the EOGM was effective to carry into effect the resolution regarding the contribution. As BHH had not paid the contribution, he was properly disqualified from voting at the second AGM.

[8] The fact that the resolution fixing the rate of interest in respect of late payment of contribution at 10% had incorrectly described the rate as 'the statutory rate' was immaterial. Any damage resulting from subsidiary proprietors being misled was minimal. The rate of 10% was within the powers of the MC to fix.

[9] The validity of the adjourned second AGM was not affected by the fact that it was not called within 15 months of the last annual general meeting. To hold otherwise would mean that no valid meeting could be held once the 15-month period had lapsed. The only effect of such non-compliance with the law is that the corporation and its officers laid themselves open to prosecution.

[10] Even if there were non-compliance in this case, such non-compliance would be adequately dealt with by the available sanctions under s. 28(5), and should not render null and void the meetings and resolutions complained of, as otherwise the very mischief of bad management and chaotic management which the Act seeks to prevent would result.

[Appeals dismissed with costs.]

Cases referred to:

Smyth v. Darley [1849] 9 ER 1293 ***(cit)***
Re Railway Sleepers Supply Co. [1885] 29 Ch D 204 ***(not foll)***
Mercantile Investment & General Trust Co. v. Mining Co. Ltd. [1893] 1 Ch 484 ***(cit)***
Woolf v. East Nigel Gold Mining Co. Ltd. [1905] 21 TLR 660 ***(cit)***
Re Hector Whaling Ltd. [1936] Ch 208 ***(not foll)***
Musselwhite v. CH Musselwhite & Son Ltd. [1962] 1 Ch 964 ***(cons)***
Watt v. Thomas [1947] 1 All ER 582 ***(cons)***
Howbeach Coal Co. v. Teague [1860] 5 H & N 151; 157 ER 1136 ***(cit)***
Re Romford Canal Co. [1883] 24 Ch D 85 ***(cit)***

M Harris Ltd. [1956] SC 207 ***(cit)***
Re Wolverhampton Borough Council's Aldermanic Election [1962] 2 QB 460 ***(cit)***
R. v. Epsom & Ewell Corp. [1964] 1 WLR 1060/[1964] 2 All ER 832 ***(cit)***
London & Clydeside Estate Ltd v. Aberdeen District Council [1979] 3 All ER 876 ***(cit)***
Montreal Street Railway Co. v. Normandin [1917] AC 170 ***(cit)***

Legislation referred to:
Interpretation Act (Cap 1) [Sing], s. 2
Land Titles (Strata) Act [Sing], ss. 3, 8(8), 28, 29(1), 34, 34(b), 34(5) & 1st Sch. paras. 11, 12(1), (2), 14, 15, 16

For the appellant/defendant - Tang Khin Wai
For the respondents/plaintiffs - M Sivakumar

JUDGMENT

Yong Pung How CJ:

The plaintiffs/respondents are a management corporation (the corporation) constituted on 15 March 1983 under s. 28 of the Land Titles (Strata) Act (Cap. 277, 1976 Reprint) (the Act). Although the appeal record, including the grounds of judgment, referred specifically to the 1970 revised edition of the Act, the section numbers cited were in fact those of the 1976 reprint of the Act, and to avoid confusion I will refer in this judgment to the relevant sections as they were numbered in the 1976 reprint. The corporation consists of the subsidiary proprietors of 172 flats in two high-rise blocks (the Skyscraper flats) and one walk-up block (the Skyvilla flats) in a housing estate. The defendant/appellant (the appellant) is one of the subsidiary proprietors of the Skyvilla flats.

By s. 29(1) of the Act, it is the duty of the corporation, *inter alia*:

> (a) to manage and properly maintain the common property and keep it in a state of good and serviceable repair.

The funds necessary for this purpose are raised by levying contributions on the subsidiary proprietors in proportion to the share units of their respective lots. The contribution to be levied is determined at a general meeting of the corporation, and becomes due and payable on the passing of a resolution to that effect. The term 'share units' is defined in s. 3 of the Act as follows:

> ... share units, in respect of a lot, means the share units determined for that lot according to its share value and shown as such in the schedule endorsed on the strata title plan.

By notice of meeting dated 23 February 1984, an extraordinary general meeting of the corporation was convened by Colliers Goh & Tan, the managing agents of the corporation, for 3 March 1984. Item 3 of the agenda set out in the notice of meeting was:

> 3. To consider and approve the following resolutions:
>
> (i) That with effect from 1 April 1984, the maintenance contributions shall be levied on subsidiary proprietors proportionately with the share value of one (1) share each held by the respective strata lots, in compliance with s. 34(b) of the Land Titles (Strata) Act, Cap. 277.
>
> (ii) That the sum of RM516,000 shall be raised towards the cost of restoration and redecorating works, reconstruction of refuse chutes, erection of perimeter fence and other remedial works to the common parts of the buildings payable per share unit in three (3) monthly instalments of RM1,000 per instalment on or before 1 April, May and June.

(iii) That the maintenance contributions payable towards the management fund shall from 1 April 1984 be revised to the rate of RM74 per share unit per month payable quarterly in advance at RM222 each on the first day of April, July, October and January. (See Appendix II).

(iv) That the sum of RM172 per share unit shall be raised towards the purchase of new CATV system to be paid in full on or before 1 April 1984.

(v) That contribution for sheltered car-parking lots shall be charged at the rate of RM30 per lot per month, recoverable quarterly in advance at RM90 each on the first day of April, July, October and January.

(vi) That interest at the statutory rate of 10% per annum shall be levied on all late maintenance contributions and any other payments that may in future fall due. A grace period of thirty (30) days shall be given, after which interest and all legal fees and costs incurred in the recovery of all arrears shall be charged to the respective proprietors.

The appellant who was the subsidiary proprietor of a Skyvilla flat received his copy of the notice on 28 February 1984. He apparently considered, *inter alia*, that the proposed increase in maintenance charges in accordance with the share value of one share unit for each subsidiary lot, which would bring the charges for Sykvilla owners to the same level as those for Skyscraper owners, was unfair to Skyvilla owners. The Skyscraper units were larger in area, and maintenance and repair costs for high-rise blocks with lifts would be more than for walk-up blocks. He wrote on the same day to other Skyvilla owners to attend the extraordinary general meeting and to vote against all the resolutions. He himself attended the meeting and took an active part in the proceedings; he also stood for election as the chairman of the meeting but was not successful. But out of his initial belief that his Skyvilla flat should not have to pay contributions at the same rate as Skyscraper flats, a belief which was later held by the Court to be unfounded, and other minor grievances, including the wrong removal of an awning belonging to his flat, there developed several years of protracted litigation, presumably in the cause of principle.

At this extraordinary general meeting of the corporation on 3 March 1984, resolutions were passed for the purchase of the new CATV system, for contributions for sheltered car-parking lots, for the erection of a security hut, for the reconstruction of refuse chutes, for redecorations to the buildings, and for the levy of interest on the late payment of maintenance and other contributions. On the subject of maintenance contributions which was covered by the proposed resolutions under items 3(i) and (iii) of the agenda, the meeting failed to reach agreement. The minutes of the meeting recorded the result in the following terms:

6. Maintenance Contributions

The meeting was overwhelmed with disputes over this matter.

The House finally decided that the two resolutions which appeared as items 3(i) and (iii) in the agenda be suspended and be substituted by the following:

That the issue of maintenance contributions payable by subsidiary proprietors of Skyvilla and Skyscraper units be referred to the High Court of Singapore by the Management Corporation and that resolutions (i) and (ii) be deferred.

The majority agreed to the above proposal on the condition that the said referral proceeding shall be given a period of only three months to finalize, after which notwithstanding that the Court's decision has not been arrived at, maintenance contributions shall be payable by Skyvilla residents at equal rate to that payable by Skyscraper residents. Should the Court decide in

favour of Skyvilla residents, that is, they pay at a lower rate, then the amount paid in excess after the said three-month period shall be deemed as a loan from the residents of Skyvilla to the Management Corporation.

The present rates of RM65 for Skyscraper and RM35 for Skyvilla shall therefore be maintained for the quarter of April to June 1984.

On 23 May 1984 the High Court held, on the matter being referred to it in Originating Summons No. 241 of 1984, that the proportion payable by each subsidiary proprietor for the maintenance of common property must be solely determined by the share value of the subsidiary proprietor and that any other form of levying contribution by a management corporation is ultra vires the Act.

The second annual general meeting of the corporation was called for 27 January 1985. Because there was no quorum, the meeting was adjourned to 3 February 1985 in the following week in accordance with para. 12(2) of the First Schedule to the Act. At this meeting, a motion to confirm the minutes of the extraordinary general meeting on 3 March 1984 was put to a vote. At the request of the appellant, a poll was taken and the minutes were duly confirmed by the poll to have been properly recorded without amendment. The second annual general meeting also resolved by a vote 'that the maintenance contributions payable towards the management fund shall be at the rate of RM74 per share unit per month payable quarterly in advance at RM222 each at the first day of April, July, October and January'.

Under s. 34(5) of the Act, any contribution levied in respect of a lot is due and payable on the passing of a resolution to that effect by the management corporation, and in accordance with the terms of that resolution, and may be recovered as a civil debt from a subsidiary proprietor of, or his successor in title to, the lot. In the case of this estate, 171 of the 172 subsidiary proprietors paid the contributions levied on them. The appellant however refused to pay the amounts of the contributions which were claimed against him. On 11 December 1984, the corporation brought DC Summons No. 11661/84 and on 5 June 1986 MC Summons No. 11447/86 against him to recover the respective amounts due by him. Both summonses were consolidated and heard in a single trial in the District Court. At the conclusion of the hearing, the learned District Judge gave judgment in favour of the corporation for RM3,293.23 and costs in respect of DC Summons No. 11661/84 and for RM1,800.71 and costs in respect of MC Summons No. 11447/86. Judgment was also given in favour of the appellant for RM700 in respect of part of his counterclaim in MC Summons No. 11447/86 for RM3,556.31 for the replacement of the awnings of his flat and for the costs incurred by him in clearing the blockage to some pipes. As can be seen, the amounts involved were not substantial. The appellant appealed against the whole of the decisions in DC Summons No. 11661/84 and MC Summons No. 11447/86 and also such part of the decision on the counterclaim which had only awarded the appellant RM700, and not the remaining RM2,856.31 claimed.

Before this Court, the appellant submitted 68 grounds of appeal, and his Counsel argued doggedly through each one of them, with a 181-page written submission, laced with footnote authorities. Solicitors are also officers of the Court and, in preparing an appeal, must remember that they have a responsibility not only to their clients but also to the Court. This dual responsibility extends to their ensuring at all times that their case is presented in a manner which contributes towards an early determination of the real issues. The preparation of the petition of appeal, in particular, should have regard to O. 54 r. 5 which provides that it 'shall contain concisely and under distinct heads, without argument or narrative' the matters of law or of fact in regard to which the Court appealed from is alleged to have erred. In the

present case, with 68 grounds, there was considerable overlapping and grounds of substance and minor points became inextricably mixed. Essentially, however, the main grounds which had been fractionated into 68 separate paragraphs were:

(a) that the extraordinary general meeting held on 3 March 1984 was invalid, because there had been a failure to give the necessary seven days' notice of meeting, there was no quorum at the meeting, and some subsidiary proprietors including the appellant were improperly disqualified from voting;

(b) that, as the extraordinary general meeting was invalid, all the resolutions passed at the meeting were also invalid and null and void, and could not be subsequently ratified;

(c) that the adjourned annual general meeting held on 3 February 1985 was also invalid, because it had not been called within 15 months of the last annual general meeting held on 22 May 1983, and at the meeting the appellant had been improperly disqualified from voting; and

(d) that all these defects could not have been waived by the appellant.

Finally, arising from his counterclaim, the appellant claimed the return to him of the sum of RM1,256.31 paid by him as maintenance contributions, and the payment to him of RM1,600 for the loss of the use and enjoyment of his flat.

The position of a notice of meeting is governed by para. 11 of the First Schedule to the Act which provides as follows:

> Seven days notice of any general meeting, specifying the place, date and hour of the meeting and the general nature of the business to be transacted, shall be given to every proprietor and every first mortgagee of a lot in the subdivided building (being a registered mortgagee who has notified his interest to the corporation):
>
> Provided that accidental omission to comply with this paragraph in respect of a proprietor or mortgagee shall not invalidate the proceedings at the meeting.

The corporation contended that the notices had been sent by post or had been hand delivered to all the recipients giving them the requisite seven days' notice. The appellant contended that he, together with some five other subsidiary proprietors, were not given the requisite seven days' notice, which was a mandatory requirement. He was able to prove that, although the notice which he received was dated 23 February 1984, he had only received it in the evening on 28 February 1984 in an envelope which was postmarked 27 February 1984, and accordingly that the requirement for seven days' notice had not been compiled with, at least, in his case. Before me, the appellant's Counsel cited an unreported case (Originating Summons No. 1375 of 1986) in which he submitted that Coomaraswamy J held that the seven days' notice prescribed by para. 11 was mandatory and non-compliance rendered the meeting invalid; unfortunately, the learned Judge's grounds of judgment were not available and the order of Court exhibited in the record of appeal quite understandably did not deal with the point. The appellant's Counsel also cited a number of old cases which I do not think help us on the facts of the present case (*Smyth v. Darley* [1849] 9 ER 1293; *Re Railway Sleepers Supply Co.* [1885] 29 Ch D 204; *Mercantile Investment & General Trust Co. v. International Company of Mexico* [1893] 1 Ch 484; *Woolf v. East Nigel Gold Mining Co. Ltd.* [1905] 21 TLR 660; *Re Hector Whaling Ltd.* [1936] Ch 208). In my opinion, the correct application of para. 11 in this case was that the omission to give the requisite notice of meeting *prima facie* invalidated the meeting (*Musselwhite v. CH Musselwhite & Son Ltd.* [1962] 1 Ch 964, cited by the appellant), and it was then for the Court to determine whether or not the omission

was accidental, so that the proviso to para. 11 would apply. Whether an act or an omission is accidental is very much a question of fact, which in a case of this nature can best be determined by a trial Judge after hearing the evidence of the persons who were involved in or knew about the act or omission. On this question, the learned District Judge having heard the witnesses and having ascertained their veracity made a clear finding of fact, that there had been no deliberate failure on the part of the corporation to give notice, and consequently that any omission would have been an accidental one, coming within the proviso to para. 11. An appellate Court should always be slow to interfere with such a finding of fact: *Watt v. Thomas* [1947] 1 All ER 582. On this question of notice, therefore, I am in agreement with the learned District Judge. In any event, so far as the appellant was concerned, he had not been prejudiced by the short notice as he had been able to circularize all other Skyvilla subsidiary proprietors to attend the meeting and oppose the resolutions, and he himself attended the meeting and took an active part in it.

The appellant also contended that there was no quorum at the extraordinary general meeting on 3 March 1984. Paragraph 12(1) which governs the quorum at general meetings provides as follows:

> 12 (1) One-half of the persons entitled to vote shall constitute a quorum at a general meeting.
>
> (2) If within half an hour after the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time; and, if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, those persons entitled to vote who are present shall constitute a quorum.

In the present case, there was some confusion in the records of the proceedings at the meeting, which extended to the details as to the numbers of subsidiary proprietors who were entitled to vote, and as to which of them did vote either in person or by proxy. The minutes of the meeting, which were subsequently confirmed at the second annual general meeting on 3 February 1985, recorded that the managing agents reported at the outset of the meeting that 136 of the 172 subsidiary proprietors were entitled to vote, which meant a quorum was one-half of 136 or 68; also that there were 52 subsidiary proprietors present in person and 17 present by proxy, making a total of 69 which complied with the requirements for a quorum of 68. After hearing the evidence of the witnesses in the Court below, the learned District Judge made a finding of fact, that a total of 96 persons were present, of which 87 persons (55 subsidiary proprietors and 32 proxies) were entitled to vote. As the minimum possible number for a quorum could only be 86 persons out of 172 subsidiary proprietors, the assembled 87 persons, present in person or by proxy, who were entitled to vote, constituted for him a valid quorum. The appellant contended that the general principle of law is that the number of persons necessary to constitute a quorum must be present in person and not by proxy, unless the relevant regulations expressly or impliedly provide for proxies to be counted in determining the number. The appellant's Counsel cited *Howbeach Coal Co. v. Teague* [1860] 5 H & N 151/157 ER 1136; *Re Romford Canal Co.* [1883] 24 Ch D 85 and *M Harris Ltd.* [1956] SC 207. Thus, it was contended, in addition to the persons who were not entitled to vote, the proxies in this case should also have been eliminated in calculating the persons present for the purpose of determining whether or not there was a quorum. Calculated this way, there should have been no quorum. In the circumstances, without a quorum, the meeting should have been adjourned to the same day in the next week at the same place and time under para. 12(2). This course of action not having been followed, the resolutions transacted subsequently at the meeting were invalid.

In my opinion, it is necessary to have regard to the full context of the First Schedule, and to the purposes for which the Act was passed, to arrive at the correct construction of the word 'persons' in para. 12(1). Throughout the First Schedule, owners of lots are described as 'proprietors' (as in paras 1, 3, 5, 8, 10, 11, 15, 16 and 17), while the proprietors who serve on the council of the corporation are described as 'members' (as in paras 3, 4, 5, 6, 8 and 18). In para. 12, however, a new category of 'persons entitled to vote' has been introduced into the First Schedule. This category cannot be restricted to proprietors but must necessarily be extended to include their proxies; apart from the fact that the term 'proprietors entitled to vote' would have been used if it had been intended to restrict its scope to proprietors and to exclude proxies, para. 15(1) has specifically conferred on proxies a clear entitlement to vote both on a show of hands or on a poll. Indeed, since 'persons' must include 'companies' under s. 2 of the Interpretation Act (Cap. 1, 1985 Edn.), if the construction contended by the appellant were correct, a quorum might be difficult to achieve if corporations owned the majority of lots, or be impossible if all lots were owned by corporations; and, in any such event, subsidiary proprietors who were corporations or persons living out of the jurisdiction would be prevented from voting. Such a construction would not be consistent with the purpose of the Act or the smooth working of the system of management which it intended to regulate. In the present case, the learned District Judge made a finding of fact that there were 55 subsidiary proprietors and 32 proxies present who were entitled to vote, and these 87 persons constituted a valid quorum. In my opinion, this was a valid quorum. It may be of some interest to note that para. 3(2) of the Third Schedule to the 1988 Act provides that:

> ... the number of subsidiary proprietors present at the meeting either in person or by proxy ... shall form a quorum.

The appellant was one of several subsidiary proprietors who were disqualified from voting at the extraordinary general meeting for failing to pay their contributions. The appellant contended that, as no resolution to levy contributions had been passed by the corporation before the extraordinary general meeting, his disqualification for non-payment was unlawful and consequently the extraordinary general meeting was null and void. Paragraph 16 of the First Schedule provides:

> ... no proprietor shall be entitled to vote at a general meeting unless all contributions to the management fund of the corporation in respect of his lot have been duly paid.

The corporation was incorporated on 15 March 1983 when the management fund was set up. Before that, the estate which comprised the Skyscraper flats and the Skyvilla flats was managed by a company called Cheng Kei Enterprises to which the appellant and other subsidiary proprietors paid contributions. After the corporation was set up, Cheng Kei Enterprises assigned all its assets to the corporation, including moneys which were owing to Cheng Kei Enterprises whereupon these moneys which were due by the appellant which, by his own admission, were not paid by him to the corporation until 30 April 1984, after the extraordinary general meeting on 3 March 1984. The appellant contended in effect that the term 'contributions' in para. 16 only referred to contributions levied by the corporation at a general meeting under s. 34 which would then become due and payable by virtue of the passing of the resolution to that effect, and as no such resolution had been passed, there was nothing due from him. The term 'contribution' is not defined in the Act, and in my opinion it is necessary in the context of the entire legislation to give the term as used in para 16 a wider meaning, to include the contributions previously owing by the appellant to Chen Kei Enterprises which had been assigned to the corporation and into the management

fund. As all contributions, whether pursuant to a resolution at a general meeting or otherwise, had not been paid by the appellant at the time of the extraordinary general meeting, he was rightfully excluded from voting.

It should be noted, however, that of the three resolutions which were approved at the extraordinary general meeting on 3 March 1984, the security hut and other incidental works had already been carried out; the construction work had already been awarded to a named construction company; and the construction of the rubbish chutes was subsequently put out to tender. The form and wording of the terms in which the resolutions were submitted in the notice of meeting and subsequently recorded in the minutes of the meeting clearly did not reflect the correct situation on the ground at the relevant times and were therefore not entirely satisfactory, as so often happens with proceedings of management corporations in which legal or drafting expertise is usually not available. But the purpose and implications of the resolutions in the present case could not have been other than clear to all the subsidiary proprietors when they received the notice or attended the meeting. In my opinion, therefore, the imperfections in drafting the terms of the resolutions in no way prevented the subsidiary proprietors from understanding the full import of their terms. The fact that the resolutions might not have been properly implemented later also in no way affected the validity of the resolutions themselves.

One aspect of the proceedings at the extraordinary general meeting which was severely criticized by the appellant's Counsel was the manner in which the third resolution relating to external redecorations to the buildings was recorded in the minutes of the meeting as having been 'approved by voice vote'. It was contended that this was in contravention of the mandatory requirement imposed by para. 14(1) of the First Schedule that

> ... a resolution at a general meeting shall be decided on a show of hands unless a poll is demanded by a person entitled to vote'.

This was not compiled with when the resolution was approved by 'voice vote', and accordingly there was no valid vote on this particular resolution. Counsel referred to *Re Wolverhampton Borough Council's Aldermanic Election* [1962] 2 QB 460; and *R v. Epsom & Ewell Corp.* [1964] 1 WLR 1060/[1964] 2 All ER 832. In my opinion, the term 'show of hands' in this context is not necessarily restricted in its meaning to a literal raising of hands alternately by those for and against the resolution, but in fact bears a wider meaning of a show or demonstration by the meeting that it is or is not in support of a resolution. This is in direct contrast to the very much more exacting procedure which is followed when a poll is demanded, in which case the exact number of votes to which each subsidiary proprietor or proxy is entitled must be ascertained, scrutineers have to be appointed, and the actual number of votes cast for and against the resolution has to be recorded. In practice, when resolutions clearly have the support of the majority at a meeting, as was the case with the three resolutions at the extraordinary general meeting, the procedure of showing hands does not require the actual number of votes or hands for or against the resolution to be counted and recorded, and this was in fact the position under para. 14(2) of the First Schedule. It is in fact not an uncommon practice in such situations for the resolution to be accepted by the meeting by a general vocal acclamation, or what has been inaccurately described in this case as a voice vote. While the recording in the minutes of a formal declaration by the chairman of the meeting that a resolution has been carried on a show of hands would have been preferred, in that it would have been conclusive evidence of that fact by virtue of para. 14(2),

the failure to make or record such a declaration does not *per se* make a resolution invalid. I am of the opinion that in all the circumstances the recording in the minutes that the proposal was approved was sufficient evidence in the present case of a valid resolution. It is to be noted that the minutes of the second annual general meeting on 3 February 1985 recorded on this matter:

> The chairman suggested that the matter be put to a vote to confirm that the minutes of extraordinary general meeting were properly recorded and required no amendment.
>
> Mr. Bin [the appellant] requested for a poll.
>
> The votes were witnessed by Mrs. Jain and Mr. Bin. By a vote of forty (40) and two (2) against, the minutes were confirmed as proposed by Mrs. Chang and seconded by Mrs. Jain.

Here again, it might perhaps have been more satisfactory if there had been a clearer and more specific reference in formal terms to the validity of the resolutions at the extraordinary general meeting; but, in my judgment, the intention and resulting implications of this poll were clear and constituted a ratification and confirmation, if such were needed, of those resolutions.

In fact, these three resolutions did not have practical significance, and if there was any doubt the matter was rectified eventually by the confirmation of the minutes of the extraordinary general meeting, without amendment, by the poll, taken at the request of the appellant, at the adjourned annual meeting on 3 February 1985. It was therefore only the subject of maintenance contributions which could possibly be said to have been deferred at the extraordinary general meeting on 3 March 1984 and to have to be decided later. But what was actually decided at that extraordinary general meeting, as para 6 of the minutes shows, was that only the implementation of resolutions 3 (i) and (iii) should be deferred for three months while the question was referred to the High Court for clarification. If the Court's decision could not be obtained before the expiration of the period of three months, the proposed increase in maintenance charges would be applied; later, if the Court should decide in favour of Skyvilla owners, any amount paid in excess by them after the three-month period would be deemed to be a loan by them to the corporation. In any event, this matter was finally dealt with at the adjourned annual general meeting on 3 February 1985, which had been properly convened and at which there was clearly a quorum by virtue of para. 12(2), when the subject of maintenance contributions came up for consideration. At this meeting, at which the appellant himself was one of 12 persons put up for election to the council of the corporation and all of whom were elected unopposed, item 5 of the minutes recorded as follows:

> *Maintenance Contributions*
>
> It was resolved by a vote of twenty eight (28) for and four (4) against that the maintenance contributions payable towards the management fund shall be at the rate of RM74 per share unit per month payable quarterly in advance at RM222 each at the first day of April, July, October and January.

In my opinion, if there was any doubt about the validity of the holding arrangement reached at the extraordinary general meeting, this resolution of 3 February 1985 was totally effective to carry into effect the resolution which had been deferred at the extraordinary general meeting on 3 March 1984. In the circumstances, the appellant was liable to pay the corporation the various amounts under resolutions 3 (i) and (iii) and he not having paid them was properly disqualified from voting at the adjourned annual meeting on 3 February 1985.

Another argument raised before me by the appellant's Counsel was that the resolution at the extraordinary general meeting setting the interest payable on late contributions was defective and unenforceable because it provided expressly for the payment of 'interest at the statutory rate of 10 per cent per annum' when the Act had not provided for any such statutory rate, and accordingly the subsidiary proprietors present at the meeting had been misled on a material and crucial point. The basis for this argument was that s. 34(3) of the Act imposes not a statutory rate but a maximum rate of 10% pa on the interest payable on late contributions:

> For the purpose of establishing and maintaining the management fund the management corporation may at a general meeting:
>
> (c) determine the amount of interest payable by a subdisiary proprietor in respect of late contributions which shall not exceed the rate of 10 per cent per annum.

So far as the rate of 10% was concerned, therefore, it was within the powers of the management corporation; so far as the adjectival use of the word 'statutory' was concerned, it caused a misdescription and might have misled the subsidiary proprietors into thinking that the rate of interest had been fixed at 10% by statute. The damage, if any, done by the incorrect description was negligible however and, on a perusal of the appeal record, it does not appear to me that the subsidiary proprietors were deceived or even concerned by the misdescription. In my opinion, it was not a ground of appeal of sufficient substance and weight on which to allow an appeal.

I should add that it was argued before me that the adjourned annual general meeting on 3 February 1985 was invalid because it had not been called within 15 months of the last annual general meeting on 22 May 1983 as required by law. I do not consider that this argument has merit. In the case of the annual general meeting, it should of course have been called not later than 22 August 1984, within the period of 15 months allowed by law, but the fact that no such annual general meeting was called merely meant that the corporation and its officers laid themselves open to prosecution, and could not in any way affect the validity of an annual general meeting called in 1985, if the proper procedure was followed. If this argument could be valid, it could lead to the absurd result that, once there has been a default, no valid annual general meeting could ever be called thereafter.

In this appeal, the respondents have drawn my attention to the overall need to bear in mind the legislative and social environment which the parties to the appeal are in. This should be a relevant consideration in deciding whether acts or omissions of a technical and relatively minor nature in the conduct of a meeting must necessarily amount to a non-compliance with regulations to the extent of defeating the purposes for which the legislation was enacted. In *London & Clydeside Estate Ltd. v. Aberdeen District Council* [1979] 3 All ER 876, Lord Hailsham LC said at p. 883:

> When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the Courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the Courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences on himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled

> to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the Courts will decline to listen to his complaint. But in a very great number of cases, it may be in a majority of them, it may be necessary for a subject, in order to safeguard himself, to go to the Court for declaration of his rights, the grant of which may well be discretionary, and by the like token it may be wise for an authority (as it certainly would have been here) to do everything in its power to remedy the fault in its procedure so as not to deprive the subject of his due or themselves of their power to act. In such cases, though language like 'mandatory', 'directory', 'void', 'voidable', 'nullity' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the Courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes invented by lawyers for the purposes of convenient exposition.

The respondents have contended that there is no evidence whatsoever of any flagrant or outrageous abuse of any obligation, and that in this respect the appellant's complaints at best related to minor irregularities which should not be allowed to invalidate the corporation's proceedings. Even if there were irregularities, they were inconsequential, and the proceedings were conducted in good faith. Grave injustice would result if the extraordinary general meeting, the second annual general meeting, and the respective resolutions are now held to be null and void *ab initio*. All contributions levied since incorporation would have to be returned to the relevant subsidiary proprietors. The corporation would have to levy fresh contributions from the present subsidiary proprietors, who may or may not have been subsidiary proprietors at the material time. Apart from the obvious absurdity of this, it would work injustice to those who were not subsidiary proprietors at the material time. Some considerable chaos would result in the administration of the estate. The respondents have therefore contended that where such injustice, chaos and absurdity would result, public policy must necessarily dictate that the extraordinary general meeting, the second annual general meeting and the various resolutions should not be invalidated. To hold otherwise would be contrary to the purpose and spirit of an Act which seeks to provide for the efficient administration and management of subdivided buildings.

In Montreal Street Railway Co. v. Normandin [1917] AC 170, the House of Lords applied the following principle:

> When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

In the present case, sanctions for non-compliance are specifically provided by the Act, s. 28(5) of which states:

> If the management corporation makes default in complying with any requirements of, or duties imposed upon it by, any of the provisions of the First Schedule to this Act the management corporation and every member of its Council, or every subsidiary proprietor, who is knowingly a party to the breach or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred dollars.

In my judgment, even if there was non-compliance in this case, such non-compliance would be adequately dealt with by the available sanctions under s. 28(5), and should not render null and void the meetings and resolutions complained of, as otherwise the very mischief of bad management and chaotic management which the Act seeks to prevent would result.

There remains only the appellant's appeal against the judgment in respect of that part of his counterclaim which had not been awarded to him, consisting of a claim for the repayment of RM1,256.31 alleged to have been paid by him for maintenance contributions on 30 April 1984 under a fundamental mistake of fact, and a claim for RM1,600 for the loss of the use and enjoyment of his Skyvilla flat, totalling RM2,856.31. In view of the conclusions which I have reached on the maintenance contributions, I shall not deal with the counterclaim for the refund of RM1,256.31. The remaining claim for RM1,600 arose from the blockage of a drainage down pipe which it was alleged resulted in an overflow of water into the kitchen of the appellant's Skyvilla flat from about 13 January 1986 until the problem was resolved on 15 February 1986. The appellant contended that because of this the tenant did not pay the February 1986 rent of RM1,500 and presumably this was pro-rated by him to RM1,600. The appellant admitted however that the tenant, a company, had failed to pay not only the February 1986 rent but also the rent for the next three months, because it was in liquidation. The learned District Judge therefore found, and I agree, that the loss to the appellant was due to the financial straits of the tenant and not to any cause connected with the state of the property which might be attributed to the corporation. Before me, this aspect of the appeal was covered by ground 67 of the 68 grounds of appeal, and quite properly was not pressed.

Accordingly, the appeals against the judgments in favour of the corporation in DC Summons No. 11661/84 and MC Summons No. 11447/86, including the appeal in respect of the remainder of the counterclaim, are dismissed with costs.

Also found at [1991] 3 CLJ 2619